

Summary of Background and Staff Proposal

BACKGROUND SUMMARY

- EXISTING ADMINISTRATIVE HEARING PROCEDURE REGULATIONS
 - Title 17, CCR section 60065 (Administrative Hearing Procedures for the Review of Complaints)
 - Currently applies to violations of fuels standards only
 - Title 17, CCR section 60075 (Administrative Hearing Procedures for the Review of Citations)
 - Currently applies to fuels standards and violations of the Heavy Duty Diesel Inspection Program (HDVIP)
- EXISTING PROCEDURAL REGULATIONS APPLY WHEN A PARTY HAS BEEN NOTIFIED THAT THEY ARE IN VIOLATION
 - Of Fuels standards or requirements (Health and Safety Code section 43028), or
 - Of HDVIP (Health and Safety Code (H&SC) section 44011.6(h))
- EXISTING PENALTY AMOUNTS
 - Issuance of a “complaint” (existing penalties from \$25,000 to \$300,000)
 - Issuance of “citation” (existing penalties from \$5,000 to \$15,000)
- PARTY HAS A RIGHT TO REQUEST THAT THE CITATION OR COMPLAINT BE REVIEWED
 - Administrative hearing process
 - Avenue for independent review by a neutral hearing officer
- HEARING OFFICER REVIEWS THE MATTER AND DETERMINES WHETHER THE CITATION OR COMPLAINT WAS PROPERLY ISSUED
- EXISTING LAW ALLOWS FOR CIVIL PENALTIES
 - Violations of regulations relating to vehicular and non-vehicular air pollution control

SUMMARY OF THE AFFECTS OF SB 527

- SENATE BILL (SB) 527 AUTHORIZES ARB TO IMPOSE ADMINISTRATIVE PENALTIES AS AN ALTERNATE TO SEEKING CIVIL PENALTIES
 - Before SB 527, ARB could seek administrative penalties in two areas: fuels and heavy duty diesel smoke
 - Now, ARB can seek administrative penalties for other ARB regulations, orders, variances, etc.
- SB 527 ADDS SECTIONS 42410 AND 43023 TO THE HEALTH AND SAFETY CODE
 - Section 42410 authorizes administrative penalties as an alternative to civil penalties under H&SC sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3
 - Non-vehicular
 - Section 43023 authorizes administrative penalties as an alternative to civil penalties under H&SC sections Chapter 1 (commencing with section 43000) to chapter 4 (commencing with section 43800) inclusive, and chapter 6, (commencing with section 44200)
 - Vehicular
- SENATE BILL 527 DIRECTS STAFF TO USE EXISTING HEARING PROCEDURE REGULATIONS
 - Title 17, CCR sections 60065 and 60075 must be amended to include the added authority under H&SC 42410 and 43023
 - Staff proposed amendments to existing regulations
 - Include the administrative penalty authority provisions added by SB 527 and codified at section 42410 and 43023 of the Health and Safety Code

SUMMARY OF STAFF'S PROPOSED MODIFICATIONS TO EXISTING ADMINISTRATIVE HEARING PROCEDURES FOR THE REVIEW OF COMPLAINTS (title 17, CCR sections 60065 et seq.)

- PROPOSAL ADDS H&SC SECTIONS 42410 AND 43203 TO CCR SECTION 60065.1 – APPLICABILITY

- PROPOSED AMENDMENTS ADDS SEVERAL H&SC SECTIONS TO THE “NOTE” PARAGRAPHS AT THE END OF EACH SECTION OF THE REGULATION - THROUGHOUT CCR SECTION 60065
 - Adds H&SC sections 42410, 43028, 39674, 42401, 42402, 42402.1, 42402.2, 42403.2, 42410, 43008.6, 43012, 43016, 43021, 43023, 43026, 43027, 43029, 43030, 43154, 43201, 43211 and 43212
 - Will be added to all “notes” sections of the regulation
- PROPOSAL AMENDS DEFINITION OF “COMPLAINT” (CCR section 60065.2(3)) (Proposed new language is in “quotes”):
 - Complaint - a document, “other than a citation issued for a Class I violation pursuant to title 17, California Code of Regulations, section 60075,…”
 - Complaint “seeks administrative civil penalties as an alternative to judicial civil penalties”
- *SB 527 SPECIFIES THAT HEARINGS HELD PURSUANT TO THIS LEGISLATION SHALL BE PERFORMED BY AN ADMINSTRATIVE LAW JUDGE APPOINTED BY THE DEPARTMENT OF GENERAL SERVICES, STATE OFFICE OF ADMINSTRATIVE HEARINGS (OAH)*
 - *Existing regulations refers to only the ARB hearing office, which is currently authorized to conduct hearings for the review of a complaint or a citation*
 - *Amendments to definition of “hearing officer”*
- PROPOSAL AMENDS DEFINITION OF “HEARING OFFICER” - CCR SECTION 60065.2(10) - (Proposed new language is in “quotes”)
 - A hearing officer is “either” an administrative law judge appointed by ARB to conduct hearings “pursuant to Health and Safety Code section 43028, or an administrative law judge within the Department of General Services, State Office of Administrative Hearings (OAH) who shall be appointed to conduct hearings pursuant to Health and Safety Code sections 42410 and 43023.”
- PROPOSAL MODIFIES DEFINITION OF “RESPONSE” –Changes the term “Response” to “Response/Request for Hearing” and adds the language (see CCR section 60065.2(15)) (proposed new language is in “quotes”):

“requests a hearing before an administrative law judge and “...

- DELETION OF AN OBSOLETE REFERENCE - “PETITION FOR REVIEW”
 - The words or phrase “petition for review” and/or “petition for review of an executive officer decision” is deleted throughout 60065
 - No longer applicable
 - Sometimes replaced with the word “complaint”

- PROPOSED MAJOR MODIFICATIONS TO CCR SECTION 60065.16
 - Added proposed language to CCR Section 60065.16(a)(1) & (2) to add additional H&SC provisions now applicable because of SB 527 (proposed new language is in “quotes”):

A complaint can be issued “for violations:”

(1) “Arising under part 5, chapters 1 to 4 and chapter 6 of division 26 of the Health and Safety Code, or violations of any rule, regulation, permit, variance or orders of the state board adopted or issued pursuant to authority granted under those Health and Safety Code provisions”

(2) “Of regulations adopted and orders issued by the state board pursuant to authority granted under parts 1 through 4 of division of Health ad Safety Code”
 - The proposed language above clarifies what was added by SB 527

- ADDED PROPOSED LANGUAGE TO CLARIFY PENALTY AMOUNTS FOR COMPLAINTS ISSUED PURSUANT TO H&SC SECTION 43028 (FUELS) - 60065.16(d)
 - Proposed new language is in “quotes”:

“(b) Complaints issued pursuant to Health and Safety Code 43028 shall not seek penalties that” exceed \$25,000 “per violation” for “each” day of violation “or” total “penalties in excess of \$300,000”

- SB 527 ALLOWS FOR AN ADMINISTRATIVE PENALTY OF NO MORE THAN \$10,000 PER DAY AND \$100,000 PER PENALTY ASSESSMENT
 - Staff proposal modifies the existing regulation to include this penalty amount in title 17, CCR section 60065 (c) (Complaints), for complaints issued pursuant to H&SC sections 42410 and 43023 (proposed new language is in “quotes”)

“(c) Complaints issued pursuant to Health and Safety Code sections 42410 and 43023 shall not seek penalties in excess of the lesser of the maximum amount allowed by statute for a violation or \$10,000 for any day in which a violation occurs or total penalties in excess of \$100,000”

- THE INTENT OF SB 527 IS THAT ARB SHALL NOT SEEK AN ADMINISTRATIVE PENALTY IF A DISTRICT HAS COMMENCED ENFORCEMENT ACTION
 - Proposed additional language to address this area (see 60065.16(d)) (proposed new language is in “quotes”)

“(d) The state board shall not issue a complaint for any violation if:

(1) The state board shares concurrent enforcement jurisdiction with a district and the district has commenced an enforcement action for that violation;

- PROPOSED NEW LANGUAGE FOR CLARITY - A COMPLAINT CANNOT BE ISSUED FOR A VIOLATION DETERMINED TO BE A CLASS I VIOLATION – 60065.16(d)(2)
 - Class I violations are subject to the issuance of a “citation “ under title 17, CCR 60075 (proposed new language is in “quotes”):

The state board shall not issue a complaint for any violation if:

“(2) The state board has determined the violation to be a Class I violation as defined in title 17, California Code of Regulations, sections 60075.2(b)(5) and 60075.11.”

- PROPOSED NEW LANGUAGE - 60065. 16(e)(5)- COMPLAINT ISSUANCE
 - Clarifies that party has 30 days from the date that they are served with a complaint to file a response/request for a hearing before an administrative law judge
- PROPOSED NEW LANGUAGE - 60065. 16(f)- COMPLAINT ISSUANCE
 - Clarifies that a complaint shall be filed with the appropriate hearing office and served on the respondent by either personal or other form of service consistent with the Code Civil Procedures sections 415 through 417 or by certified mail, restricted delivery

- PROPOSED NEW LANGUAGE - 60065.18(a) – RESPONSE TO COMPLAINT BY RESPONDENT
 - Clarifies that respondent has 30 days after they are served with a complaint to request a hearing with an administrative law judge

- PROPOSED NEW LANGUAGE - 60065.19 - ISSUES FOR HEARING
 - For clarity (new proposed language is in “quotes”) “If the complaint alleges a repeat violation and the validity of the earlier violations(s) was not contested because of the respondent’s failure to file a response/request for hearing the validity of the earlier violations(s) shall not be at issue”

- PROPOSED NEW LANGUAGE - 60065.21(a) – SCHEDULE OF HEARINGS
 - For clarity added new language to specify that a complaint issued pursuant to H&SC 42410 and 40323 shall be assigned to a hearing officer at OAH.

- OTHER MODIFICATIONS TO SECTION 60065.21 – SCHEDULE OF HEARINGS
 - For clarity include:
 - Complaint issued pursuant to H&SC 43028 (fuels) shall be assigned to a hearing officer of the ARB (60065.21(b))
 - Specifies timeframes for which a hearing shall be scheduled (60065.21(c))

- PROPOSED NEW LANGUAGE - 60065.25 – SETTLEMENT AGREEMENTS
 - Added to section “b” (new language is in “quotes”) “For cases assigned to OAH, OAH may assign administrative law judges from the state board to assist in settlement discussions”
 - Delete paragraph 60065.25(e)

- PROPOSAL ADDS NEW PENALTY ASSESSMENT CRITERIA SPECIFIED BY SB 527 SECTION 60065.40(a)
 - When determining penalties for complaints under H&SC 42410
 - New language adds criteria listed under H&SC section 42403 - non-vehicular regulations

- PROPOSAL ADDS H&SC 43023 TO PENALTY CRITERIA OF 60065.40(b))
 - New language adds H&SC 43023 to section 60065.40(b) (existing criteria applies) – vehicular regulations

**SUMMARY OF STAFF'S PROPOSED MODIFICATIONS TO EXISTING
ADMINISTRATIVE HEARING PROCEDURES FOR THE REVIEW OF CITATIONS
(title 17, CCR sections 60075 et seq.)**

- PROPOSAL ADDS H&SC SECTIONS 42410 AND 43203 TO CCR SECTION 60075.1 – APPLICABILITY
- PROPOSED AMENDMENTS ADDS SEVERAL H&SC SECTIONS TO THE “NOTE” PARAGRAPHS AT THE END OF EACH SECTION OF THE REGULATION - THROUGHOUT CCR SECTION 60075
 - Adds H&SC sections 42410, 43028, 39674, 42401, 42402, 42402.1, 42402.2, 42403.2, 42410, 43008.6, 43012, 43016, 43021, 43023, 43026, 43027, 43029, 43030, 43154, 43201, 43211 and 43212
 - Will be added to all “notes” sections of the regulation
- PROPOSED DEFINITION OF “CITING PARTY”
 - Added new language to define the “citing party” as the ARB acting through any of its employees (see section 60075.2(4)).
- PROPOSED MODIFICATION TO 60075.2(B)
 - Added language for clarity (new language is in “quotes”)

(B) Those violations “of Part 2, Chapter 2.5, Part 4 and or Part 5 of divisions 26 of the health and safety Code”
 - Delete item 5 in its entirety
 - Add item 7 defining calendar day
 - Add item 10 defining executive officer
- *SB 527 SPECIFIES THAT HEARINGS HELD PURSUANT TO THIS LEGISLATION SHALL BE PERFORMED BY AN ADMINISTRATIVE LAW JUDGE APPOINTED BY THE DEPARTMENT OF GENERAL SERVICES, STATE OFFICE OF ADMINISTRATIVE HEARINGS (OAH)*
 - *Existing regulations refers to only the ARB hearing office, which is currently authorized to conduct hearings for the review of a complaint or a citation*
 - *Amendments to definition of “hearing office” and “hearing officer”*

- PROPOSAL AMENDS DEFINITION OF “HEARING OFFICE” - CCR SECTION 60075.(B)(11)
 - Modified language to clarify that there are two hearing offices:
 - The ARB Hearing office and OAH

- PROPOSAL AMENDS DEFINITION OF “HEARING OFFICER” - CCR SECTION 60075.2(B)(12) - (Proposed new language is in “quotes”)
 - A hearing officer is an administrative law judge appointed by the state board to conduct hearings pursuant to sections 44011.6 and 43028 of the H&SC, “or an administrative law judge with OAH, who shall be appointed to conduct hearings pursuant to Health and Safety Code sections 42410 and 43023 and these rules.”

- PROPOSED CHANGES THROUGHOUT CCR SECTION 60075
 - “Citing Party” replaces “Complainant” throughout CCR section 60075

- PROPOSAL ADDS NEW LANGUAGE – 60075.4 – SERVICE, NOTICE AND POSTING
 - New language added so that ARB receives copies of documents related to the issuance of a citation (proposed new language is in “quotes”)

“(b) If a hearing is assigned to OAH, a copy of every pleading, letter, document or other writing served in a proceeding under these rules shall also be filed with the state board”

- PROPOSED MODIFICATION TO CCR SECTION 60075.11(a) (CITATIONS)
 - For purposes of clarity - reformatted the section. As part of the reformatting, the following language was moved from section (a)(2) to section (a):

“those violations that the state board has determined, based upon its enforcement discretion, to be of a nature that is clear cut, and less complex and serious, in terms of size, scope, and harm to the public and environment”

➤ PROPOSED MODIFICATION TO CCR 60075.11(a)(2)

- Proposed new language is in “quotes”:

“(2) Violations arising under Part 5, chapters 1 to 4 and chapter 6 of division 26 of the Health and Safety Code, or violations of any rule, regulation, permit, variance, or orders of the state board adopted or issued by the state board pursuant to the authority granted by those provisions of the Health and Safety Code”

➤ PROPOSED MODIFICATION TO CCR 60075.11(a)(3)

- Proposed new language is in “quotes”:

“(3) Violations of regulations adopted and orders issued by the state board pursuant to authority granted under Parts 1 through 4 of division 26 of the Health and Safety Code”

➤ PROPOSED MODIFICATION TO CCR 60075.11(b)

- Proposed new language is in “quotes”:

When determining a Class I violation, “and penalty levels of a citation,”

The ARB shall consider “the civil penalty amounts prescribed by statute and all relevant circumstances surrounding the violation, including but not limited to the factors in H&SC sections 42303 and 43031”

➤ PROPOSED MODIFICATION TO CCR 60075.11(c)

- Proposed new language is in “quotes”:

Proposed modification included language to clarify that the maximum penalty for a Class I violations may not exceed “the lesser of the maximum allowed by statute for a violation or” \$5,000 per day a violation occurs or \$15,000 as a cumulative maximum

➤ PROPOSED MODIFIED LANGUAGE TO 60075.11(d)

- Proposed new language is in “quotes”:

“(d) The state board shall not issue a citation for a Class I violation covered by section (a)(3) for any violation if the state board shares concurrent enforcement jurisdiction with a district and the district has commenced an enforcement action for that violation”

- This is consistent with the intent of the legislation

- PROPOSED MODIFICATION TO SECTION 60075.12(b)(8)
 - Added new language to clarify how a citation shall be served to a citee (“personal mail or other form of service consistent with Code of civil Procedure sections 415 through 417 or by certified mail, restricted delivery”).
- PROPOSED MODIFICATION TO 60075.17(b)
 - Propose to add the following new language:

“A citee shall file a request for hearing to contest a citation with the executive officer”.
- OTHER PROVISIONS IN 60075.17 MODIFIED (new language is in “quotes”)
 - 60075.17. (e) - “Executive officer” (rather than the hearing office) “shall” extend applicable filing period
 - 60075.17 (f) - Notification of “executive officer” (rather than the hearing office) of intent to contest the citation
 - 60075.17 (i)(1) & (2) - Also modified is language regarding where documents should be filed (either with ARB or OAH)
- PROPOSED CHANGES TO 60075.20
 - Change title from “Effect of Filing a Request” to “Stays Pending Filing of a Request”
- PROPOSED CHANGES TO 60075.21
 - Change title from “Response” to “Response by Citing Party”
 - Deletions and additional language to allow 20 days for executive officer response to request for hearing by citee
 - Deletion of entire paragraph (b) (redundant)
- PROPOSED CHANGES TO 60075.22 – Withdraw of Request for Hearing
 - Language changed to reflect that if at the time a motion to withdraw a request for hearing is granted, the time period for filing a request has passed, the citation becomes a final order not subject to review
- PROPOSED CHANGES TO 60075.24 – SETTLEMENT
 - Adds language that states that for cases assigned to OAH, OAH may assign hearing officers from the state board to assist in settlement conferences

- PROPOSED CHANGES TO 60075.30 -TIME AND PLACE
 - Language is changed to clarify that “the executive officer” deems a request for hearing complete and then assigns the case to the appropriate hearing officer
 - Either ARB or OAH
- PROPOSED MODIFICATION TO 60075.38 (DEFAULT ORDER)
 - A party who has failed to appear at a scheduled hearing has “10” days after service of a notice of default to make a request for reinstatement of the proceeding. Existing language allows for 30 days.
- PROPOSAL ADDS NEW PENALTY ASSESSMENT CRITERIA SPECIFIED BY SB 527 SECTION 60075.39(c)
 - When determining penalties for complaints under H&SC 42410
 - New language adds criteria listed under H&SC section 42403 - non-vehicular regulations
- PROPOSAL ADDS H&SC 43023 TO PENALTY CRITERIA OF 60075.40(b))
 - New language adds H&SC 43023 to section 60065.40(b) (existing criteria applies) – vehicular regulations
- PROPOSAL ADDS H&SC 43023 TO SECTION 60075.39(b) AS SPECIFIED BY SB 527
 - Criteria for vehicular penalty assessments is already in the regulation 60065.39(b) and includes factors in H&SC 43031
 - New language added to indicate that the existing criteria will apply to citations issued under H&SC 43023 and H&SC 43028
- PROPOSAL ADDS NEW PENALTY ASSESSMENT CRITERIA TO CCR 60075.39(c) AS SPECIFIED BY SB 527
 - When determining penalties for complaints under H&SC 42410
 - New language adds factors listed under H&SC section 42403 - non-vehicular regulations

MORE INFORMATION

A more detailed description of the amendments proposed to title 17, CCR sections 60065 and 60075 is included in the [Draft Proposed Rule Amendments](#).

